DOCUMENT RESUME

ED 185 742 EC 123 643

TITLE	Scripts for Preparing for a Hearing, Conducting a Hearing, Writing a Decision.
INSTITUTION	National Association of State Directors of Special Education, Washington, D.C.
PUB DATE	78
NOTE	23p.
AVAILABLE FROM	National Association of State Directors of Special Education, 1201 16th St., N.W., Washington, DC ($125 set of 3 cassette tapes, slides, scripts)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Compliance (Legal); *Decision Making; *Disabilities; Due Process; Elementary Secondary Education; *Hearings; Instructional Materials

ABSTRACT

The text of three slide/tape presentations, designed as a media resource for trainers of hearing officers, or as self study modules by hearing officers, is presented. The first module focuses on some of the critical activities a hearing officer should complete in preparation to conducting a hearing. The second module discusses appropriate procedures for conducting a smooth hearing. The final module surveys the information to be included in a decision, and provides a format for writing a decision. Instructions for both automated and manual presentation of the materials are provided. (PHR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED185742

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Scripts for

Preparing for a Hearing
Conducting a Hearing
Writing a Decision

National Association of State Directors of Special Education
1201 16th St., N.W.
Washington, D.C.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
William Schipper
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EC123643

The three slide/tape presentations contained in this package were designed to accompany the NASDSE step-by-step resource manual for hearing officers. They may be used as a media resource for trainers of hearing officers, or as self-study modules for use by hearing officers.

The slide/tape presentations include:

I. Preparing for a Hearing - 7 minutes

This presentation covers some of the critical activities a hearing officer should complete in preparation to conducting a hearing.

II. Conducting a Hearing - 10 minutes

Appropriate procedures for conducting a smooth efficient hearing are discussed in a step-by-step format.

III. Writing a Decision - 5 minutes

Descusses the information to be included in a decision, and provides a format for writing the decision.

Automated Presentation

The cassette tapes include an inaudible synchronizing pulse (1000 Hz) for use in automated presentation. If automatic equipment is used, the first slide (NASDSE seal) should be focused on the screen. The synchronized cassette player is then turned on. Slides will change automatically.

Manual Presentation

If automatic equipment is not available, any slide projector and cassette player may be used. The script for each presentation is organized so that slide changes are made each time a dot appears. The first slide (NASDSE seal) should be focused on the screen. The user simply follows the script while playing the cassette tape. Each time a dot appears, the slide projector should be advanced to the next slide.

I. PREPARING FOR A HEARING

FOCUS: (NASDSE seal)

NARRATOR: • When you have been appointed to preside as a hearing officer in a special education due process hearing, thorough preparation is a necessity. • When you do your homework the hearing is much more likely to move smoothly and quickly to an appropriate, fair conclusion.

• Your first responsibility is to determine if any conflict of interest is evident. If you have been asked to be the hearing officer, you must be impartial. If you are an employee of the agency involved, or have a personal or professional conflict you cannot meet the standards of impartiality.

If you find that you are able to act impartially, and you are able to devote the time necessary to provide a full, impartial hearing, you're ready to begin the process.

• You will preside over one of the five basic types of hearings:

Hearings on the Provision of Notice

• Hearing on Identification

• on Evaluation

• Placement

• and Hearing on Provision of a Free Appropriate Education

You should determine which type of hearing has been requested. • Most hearings relate to:

Evaluation,

Placement, or

Free Appropriate Education

Your first action as hearing officer, will be to contact the parent.

HEARING OFFICER: • "Hello, Mr. Meeker? My name is Stephen Wiles. I have been appointed hearing officer in the matter concerning your son Robert.

I am calling for two reasons. • First, I would like to determine if you have been fully informed of your rights. Second, I would like to ask a few questions to obtain the information I need to make the arrangements for the hearing. Do you have a few minutes now to answer my questions?"

NARRATOR: • The purpose of this telephone contact is, first, to determine if the public agency has complied with due process requirements, and second, to elicit information required for the hearing.

• You, the hearing officer must not discuss at this time any information pertaining to the case.

HEARING OFFICER: "What written evidence do you plan to introduce at the hearing? _____ Ok, anything else?" _____

NARRATOR: • You should be certain that the parents understand that any evidence they plan to introduce must be disclosed at least five days prior to the hearing. Of course, they should also know that the same rule applies to the public agency.

HEARING OFFICER: • "What witnesses do you plan to have testify in your behalf?"

NARRATOR: Ask questions to determine if the parents have • received prior notice, • explanation of access to records, • independent educational evaluation, • and other due process requirements.

HEARING OFFICER: • "Do you plan to have or have you had an independent educational evaluation? _____ Good. Do you wish to have the hearing open or closed to the public? Open? Ok. What would be the most convenient date and time for the hearing? Can you give me an alternative date? _____ Fine. Would you have any problem if the hearing is held in the school board offices? Fine. • I will send you a letter which will summarize our

discussion with a copy to the public schools. Thank you for your cooperation. Yes, that's right. Thanks again, Mr. Meeker. Goodbye."

NARRATOR: • Now make telephone contact with the public agency to inform the public agency whether due process requirements have been fulfilled, • and to elicit information pertaining to the case.

HEARING OFFICER: • "I am calling for two reasons. First, I want to confirm that I am satisfied that you have fulfilled your due process requirements in this matter. Second, I would like to ask a few questions in order to obtain the information I need to make arrangements for the hearing."

NARRATOR: You will obtain the same basic information from the public agency • and remind the agency that any information to be used in the hearing must be disclosed to the parents at least five days prior to the hearing.

HEARING OFFICER: • "Do you have a conference room large enough for an open hearing? _____ Good. Do you think it will be appropriate for an open hearing? _____ Fine.

• Mr. and Mrs. Meeker suggested that the hearing take place on the 10th. Will that date be convenient for you? Ok, great.

What was that question again, sorry I missed that _____ Oh, well I am afraid I can't answer that question because that is information pertaining to the case, and I can't discuss that with you at this time. That, you will have to hold until the hearing. _____

Ok, fine, we will see you then. Bye. Bye.

NARRATOR: • Establish a date and time that is most convenient for all concerned, and indicate you will confirm the telephone conversation in writing to the public agency and the parents.

• When the public agency is in compliance with due process requirements as in this case, you can proceed without delay. However, if the public agency has failed to comply with any required procedure, you must make certain that the failure is corrected.

• For example, if the parents did not give written consent for an evaluation, and the public agency evaluated the child without it, such written consent should be obtained prior to the hearing.

In such a case, the parents have the same rights as they had at the time of the original evaluation. If they refuse to consent to the evaluation, a hearing regarding the child's placement is inappropriate. In this case, the public agency may wish to request a hearing to obtain permission to evaluate the child.

• Careful preparation for a hearing will eliminate many surprises, and give you the information needed to conduct the hearing smoothly and efficiently.

When you are satisfied that all due process requirements have been met, • send a notification of the hearing date, time, and location to each participant. Such notification should be sent by certified mail, return receipt requested. This procedure assures that each participant is properly notified of the hearing.

Before the hearing, • make certain that an interpreter or translator will be present, if required, and that a tape recorder and sufficient tape or a stenographer will be available at the hearing. • The information to be submitted as evidence and the witnesses to be heard should be listed for your convenience.

Finally, prepare an agenda for the hearing.

- With thorough preparation, the due process hearing will not be unnecessarily lengthened to locate missing documents, or to determine procedural steps to be taken.

You are ready to conduct the hearing.

- (A Presentation of the National Association of State Directors of Special Education)

II. CONDUCTING A HEARING

FOCUS: (NASDSE seal)

HEARING OFFICER: • All right, now that Mrs. Bergman has arrived, I think we can begin the hearing. • The hearing on the appeal filed by Mr. and Mrs. Meeker concerning the educational placement of their son Robert, is called to order. • I would like to ask each participant to state his or her name and position for the record. I am Stephen Wiles, the appointed hearing officer in this case.

MOTHER: • I'm Marta Meeker and I'm Robert's mother.

FATHER: • I'm Mr. Meeker, Robert's father.

ATTORNEY: • My name is Louise Bergman, and I'm the attorney for the public school.

SPECIAL ED DIRECTOR: • I'm Ralph Stacey, director of Special Education... (voice trails off)

NARRATOR: • An impartial hearing officer is appointed to insure that both parties to a hearing are treated fairly. • The hearing officer must create an atmosphere in which relevant evidence is presented by both parties to enable an appropriate decision.

• It's essential that the hearing be held in an orderly, formal manner. • In the hearing we are observing, the verbatim transcript of the testimony is provided by use of a tape recorder, although a stenographer could have been used to produce a written record.

HEARING OFFICFR: • The issue to be determined in this hearing is the appropriate educational placement for Robert. The parents contend that Robert should continue his placement in the private school, and they are seeking funds to support that placement. • The public school contends that it can provide an appropriate program. This will be an open hearing as requested by the parents. • Now, as we proceed, I would like to ask all participants to address all of their remarks to me.

NARRATOR: • It is very important that participants direct their testimony to the hearing officer and not to each other. A hearing can quickly break down into an argument between participants if this procedure is not followed.

HEARING OFFICER: • We will now begin by asking a representative of each party--the parents, then the public

school--to present a two-minute opening statement. The parents will be heard first, since they requested the hearing. The opening statement.... (voice fades)

NARRATOR: • The hearing officer carefully explains the sequence of events in the hearing. First, there is an opening statement from the parents, followed by an opening statement from the public school representatives... • Second, both parties in turn present written evidence... • Third, parents present their oral testimony... • Fourth, the public school may, if desired, cross examine witnesses... • Fifth, the parents may, if desired, re-examine witnesses... • Sixth, the hearing officer questions each witness, if desired... • Seventh, the same procedure is followed for the public school's witnesses.

HEARING OFFICER: • After the parties have entered the written evidence and the parents' witnesses examined, cross-examined and re-examined, and I have asked any questions that I feel are material, we will follow the same sequence for the public school witnesses. • Are there any questions?

Good. Now, Mr. Meeker, I believe you indicated that you would like to make the opening statement for the parents. Is that correct?

FATHER: • I will. (Begins statement, fades out)

NARRATOR: The hearing officer listens carefully to the opening statements, • taking notes on important points. The focus of the issues to be resolved should be sharpened by these brief statements.

HEARING OFFICER: • Now that we've heard both opening statements, I would like the parents and then the public school to enter for the record any written evidence they may wish to provide in support of their case.

FATHER: • I would like to enter first this psychological report, dated November 9, 1977, from the private school.

HEARING OFFICER: We will mark this 'Exhibit 1'.

NARRATOR: • The hearing officer enters an exhibit number on each item presented, unless the other party objects to the document or part of the document. • If this occurs, the hearing officer

must rule on the objection before going on. The hearing officer checks each exhibit aginst the prepared list of exhibits presented to him prior to the meeting.

FATHER: • That's all I have to enter.

HEARING OFFICER: Thank you. Now, will the public school please submit their written evidence.

ATTORNEY: • We will be submitting a number of documents...

NARRATOR: When all exhibits have been entered and marked, the hearing officer is ready to listen to the testimony of witnesses. • Since the parents initiated the appeal, their case will be presented first.

HEARING OFFICER: Mr. Meeker, I assume that you will be presenting the testimony for the parents' side in this hearing. Is that correct?

FATHER: Yes. Robert attended the public school for three years, 1970 through 1973, and he made very little progress during those years. • During the year that he was in the private school, he made excellent progress. The psychological report which was entered as Exhibit number 1 recommends that

Robert remain at the private school, and I agree with this. • I think the kind of instruction that that report recommends can best be provided at the private school, and I don't think the public school will do any better than they did the first three years.

HEARING OFFICER: • Thank you, Mr. Meeker. Ms. Bergman, as attorney for the public schools do you have any questions at this point?

ATTORNEY: Yes. Thank you. Mr. Meeker, are you aware that the private school only goes through grade 9?

FATHER: Yes.

ATTORNEY: • And that Robert is now in grade 7 and will, therefore, only be able to attend for a limited time? Have you considered the fact of having to return Robert to the public schools at that time?

FATHER: • No, not really. I hope that Robert will be doing better by that time. Nevertheless, that's still in the future.

ATTORNEY: Thank you. No further questions.

HEARING OFFICER: • Mr. Meeker, do you have anything further to say in response to the attorney's questions?

FATHER: No, sir.

HEARING OFFICER: Then I would like to ask you a question. Have you compared the information sent to you about the public school learning center to the suggestions made for Robert's education in the psychological report you were speaking of?

FATHER: No, sir.

HEARING OFFICER: • Have you visited the public school learning center or talked to the teacher about the center?

FATHER: No, sir.

HEARING OFFICER: • Ok, fine. Thank you, Mr. Meeker. Now, Mrs. Meeker, do you have anything in the way of testimony that you would like to add to Mr. Meeker's.....(voice fades out)

NARRATOR: • The hearing officer, in a very business-like fashion, proceeds through an established sequence of testimony, • allowing the witness to testify, • calling for cross-examination, • providing an opportunity to the witness to respond to the cross examination • and then asking questions that appear to be material. This

sequence is followed until each witness has testified.

HEARING OFFICER: • That finishes the testimony in this hearing. As I stated at the outset, I would like each party to give a two-minute summary statement, if you wish. Mr. Meeker, do you wish to make a short closing statement at this time?

FATHER: • Yes, I would like to say...(trails off)

NARRATOR: • At the end of the testimony, the hearing officer provides an opportunity for each party to summarize their position and, in effect, make one last attempt to state what they feel to be important.

HEARING OFFICER: • I believe that completes the summary statements now for both sides. • At this point, I would like to make a closing statement myself. • First of all, you can expect a written decision, by certified mail, within 10 days. • Second, the recording of this hearing will be available to either party for listening or duplication on Monday at 8 a.m. at my office. If you would contact my secretary she would be glad to help you if you wish to use the recording. • Third, let me remind you that if you wish to appeal the

decision of this hearing, in this state you must do so within 10 days of receipt of the decision on this hearing and you must do that by a written notice to the State Department of Education, Administrative Review Division. • Finally, let me thank each of you for your cooperation. The hearing on this matter is now closed.

NARRATOR: After the formal testimony is completed and each party provides a summary statement, the hearing officer provides three necessary pieces of information prior to the end of the hearing. • First, a date or time period when the parties can expect to receive a written decision. • Second, information on the availability of the transcript. • Finally, the hearing officer reviews the appeal procedure for an administrative review. • With those requirements out of the way, the hearing officer thanks the parties for their cooperation and ends the hearing. • One major task remains--writing the decision. And, indeed, the entire process that we have just observed is the foundation upon which the decision must be based. For the decision must be derived from findings of fact--from the written evidence and testimony presented at the hearing. • Therefore, the hearing officer

must push opinion, professional bias and personal likes and dislikes aside and arrive at a decision which is directly supportable by the evidence. • That's why the forum that you provide for the presentation of evidence--the impartial due process hearing--is so important. It is this forum that sets the parameters for a decision. • (A Presentation of the National Association of State Directors of Special Education)

III. WRITING A DECISION

FOCUS: (NASDSE seal)

- After all of the written and oral evidence has been presented in a due process hearing, the hearing officer must write a decision.
- You will summarize all of the pertinent evidence presented at the hearing and arrive at a logical decision based on that evidence, • keeping in mind three basic limitations in the decision-making process.
- First, decisions are limited to the issue of the presenting complaint. Don't go beyond the issue brought out in the hearing when writing the decision.
- Second, the decision must be based solely on the evidence presented at the hearing. Any material that was not introduced at the hearing, personal assumptions may not be used. On the other hand, be certain that any important, relevant evidence is made part of the record. If it is not, it cannot be used in making a decision.
- The third limitation is that public agencies retain the right to place a student in a particular classroom. Though you may feel one special education teacher is better than another, your decision cannot dictate which teacher in a given program will be assigned to the student in question.

• Writing a decision becomes less difficult if a standard format is established and consistently followed. • A five part format is suggested. The parts comprise: personally identifiable information • the issue and purpose of the hearing, • findings of fact, • and the decision and rationale for that decision. • An explanation of the appeal procedure should also be included.

• If personally identifiable information is placed on a separate face page, this will facilitate the federal requirement of sending a copy of the decision to the state advisory committee. To insure confidentiality, the remainder of the decision should refer to the parties as petitioner and respondent and not include any personnaly identifiable information.

• Personally identifiable information includes the child's name, parents' names, address, and th child's social security number or student number.

• In this section, you should briefly state the reason for this hearing. What was the issue? The individual who initiated the hearing should be referred to as the petitioner and the responding party as the respondent.

• The section of the decision dealing with the findings of fact should briefly list relevant evidence

presented by the petitioner followed by that presented by the respondent.

- Only oral and written evidence presented for the record at the hearing may be used. Information gained outside the hearing cannot influence the decision, no matter how important you may feel such outside information to be.

- Evidence presented at the hearing, but not bearing on the decision need not be included in the decision. Only information which influenced your decision should be listed in this section.

- Your ruling is clearly stated in this section. The reasons for reaching this decision should be stated in relation to the relevant evidence listed earlier.

- The final section should describe the procedures for appealing your decision.

- A carefully developed and well written decision serves both parties to a hearing. If the findings of fact do not lead to a logical decision, the likelihood of an appeal is great.

- You should do everything in your power to be certain that the written decision is as internally consistent as possible.

- When copies of the decision are made and sent to the public agency and to the parents, your job as hearing officer is done.

- (A Presentation of the National Association of State Directors of Special Education)